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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,131	09/05/2000	Maurice Clarence Kemp	MORN-0006 (108347.00017)	7549

7590

11/06/2002

T Ling Chwang  
Jackson Walker LLP  
2435 North Central Expressway  
Suite 600  
Richardson, TX 75080

EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/06/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/655,131

Applicant(s)

KEMP ET AL.

Examiner

JOHN D PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 2,4-9 and 12-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Claims 1-58 are pending in this application.

Applicant's election without traverse of Group I, wherein the single disclosed species (i) is Mg or Zn, (ii) is lactic acid, and (iii) is sulfuric acid anion. It is noted that election of (i) actually contains two species. For examination purposes, the first species, Mg, will be accepted in Paper No. 6 (8/6/02) is acknowledged.

Claims 2, 4-9 and 12-58 are accordingly withdrawn from further consideration as being directed to non-elected subject matter. Claims 1, 3 and 10-11 will presently be examined to the extent that they read on the elected subject matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/48469.

WO 00/48469 explicitly discloses an acidic composition containing Group IIA metal, lactic acid and sulfuric acid anion. See page 10, lines 24-32; page 13, lines 4-9; claims 1-2, 4-6. less corrosive activity is disclosed<sup>d</sup> (claim 4). Highly acidic pH and concentration is disclosed (page 13, lines 4-9).

While better biocidal activity than a comparative organic acid + metal salt of organic acid is not explicitly disclosed for Mg containing acidic composition in the prior

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art, the prior art composition also contains the sulfuric acid anion—therefore similar comparative activity must be present.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly suggested by the teachings of the cited reference.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pak whose telephone number is 703-308-4538. The examiner can normally be reached on Monday-Thursday 8 am-5:30 pm; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1000

Pak:mv  
October 25, 2002



MORN-0000  
 (10834700017)

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PATENT

JUL 17 2002

TECH CENTER 1600/2900

5/1900/2900  
Prior  
Art w/att

For: **HIGHLY ACIDIC METALATED ORGANIC ACID**

EXPRESS MAIL NO. EV 060146475 US

DATE OF DEPOSIT: JULY 2, 2002

Sir:

Be

7-24-02

**TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT WITHIN THREE MONTHS OF FILING OR BEFORE MAILING OF FIRST OFFICE ACTION**

The information disclosure statement submitted herewith is being filed within three months of the filing date of the application or date of entry into the national stage of an international application or before the mailing date of a first Office Action on the merits, whichever event occurs last. 37 C.F.R. § 1.97(b).

Respectfully submitted,  
JACKSON WALKER L.L.P.

T. Ling Chwang  
Registration No. 33,590

Dated: July 2, 2002

**JACKSON WALKER L.L.P.**  
2435 North Central Expressway, Suite 600  
Richardson, Texas 75080  
Tel: (972) 744-2919  
Fax: (972) 744-2909

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